2007

Roger Bryner v. Cohne, Rappaport and Segal, and Emily Smoak : Brief of Appellee

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

ROGER BRYNER, Plaintiff and Appellant, vs. COHNE, RAPPAPORT & SEGAL; and EMILY SMOAK, Defendants and Appellees.	**APPELLEES' BRIEF** Appellate Case No. 20070183 District Court No. 050922650

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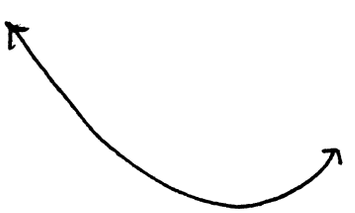

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Pursuant to Utah Rule of Appellate Procedure 24, Appellees submit the following brief in response to the arguments set forth by Appellant.

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Statement of Jurisdiction

This Court has jurisdiction over this matter pursuant to Utah Code section 78-2(a)-3(j), as this case was poured over from the Utah Supreme Court. *See* Utah Code Ann. § 78-2(a)-3(j).

Statement of the Case

A brief statement of the case may be of assistance to the Court, particularly since no such statement was provided by Appellant. In October, 2006, Appellees received a judgment against the Appellant. *See* R. 1400 (Jan. 25, 2007 Minute Entry, p.1 (the "Minute Entry"). On December 1, 2007, in order to attempt collection on the judgment, Appellees applied for and obtained a Writ of Garnishment directed to Fidelity Investments. *See id.* Fidelity Investments informed Appellees per letter that the accounts in question were retirement accounts. *See* R. 1400-01 (Minute Entry, pp. 1-2). Appellant filed a motion to vacate the garnishment of his retirement assets on December 14, 2006. *See* R. 1401 (Minute Entry, p.2). Having learned that the assets were, in fact, retirement accounts, Appellees filed a release of the garnishment on December 19, 2006. *See* R. 1401-02 (Minute Entry, pp. 2-3). The hearing on Appellant's motion was held on January 24, 2007, at which time the district court determined that, due to the release, Appellant's concerns were "moot and unnecessary." R. 1402 (Minute Entry, p.3).

Summary of Arguments

Appellant's arguments are insufficiently briefed and should be dismissed for failure to comply with rule 24(a)(9) of the Utah Rules of Appellate Procedure.

To the extent that this Court holds that Appellant sets forth cognizable arguments, such arguments are moot. Accordingly, this Courts should refrain from adjudicating the issues raised by Appellant.

Argument

I. Appellant's Claims Are Inadequately Briefed.

Appellant appeals the district court judgment. This court should dismiss this appeal on the basis that Appellant's claims are inadequately briefed.

"It is well established that a reviewing court will not address arguments that are not adequately briefed." *State v. Thomas*, 961 P.2d 299, 304 (Utah 1998); *see also Valcarce v. Fitzgerald*, 961 P.2d 305, 313 (Utah 1998) (declining to address appellant's claim on appeal due to inadequate analysis).

Utah Rule of Appellate Procedure 24(a)(9) states that the argument in the appellant's brief

> shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on.

Utah R. App. P. 24(a)(9). Compliance with this rule "is mandatory, and failure to conform to these requirements may carry serious consequences." *Beehive Tel. Co. v. Public Serv. Common*, 2004 UT 18, ¶ 12, 89 P.3d 131. "For example, 'briefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court.'" *Id.*, ¶ 12 (quoting Utah R. App. P. 24(j)).

Appellant's brief fails to comply with rule 24(a)(9). Appellant alleges that the district court erred in some manner when it ruled on Appellant's motion to vacate the garnishment. However, it is nearly impossible to decipher just what these arguments entail. This is particularly frustrating in this case, because the district court ruled that the underlying matter was "moot and unnecessary," due to Appellees' withdrawal of its claim against Appellant's retirement accounts. R. 1402 (Minute Entry, p. 3). Appellant provides no explanation as to why he objects to the district court's ruling, or on what legal basis. Appellant sets forth one or two ethereal questions, but fails to tie them into the district court's ruling; more importantly, Appellant fails to explain why this Court's assistance is necessary at all.

For instance, Appellant asks the following question at page 10 of his Appellate Brief: "Can Utah's garnishment law allow garnishment of retirement assets under 29 U.S.C. § 1144(a), for the purposes of discovery or any other purpose?" Appellate Brief, p.10. Appellant not only fails to provide an answer to this question, but he fails to explain what relevance any such answer may have on these proceedings. Instead, Appellant merely states, "[i]t is not my job to protect the State of Utah's interests. Go ahead and affirm the trial court ruling if you feel lucky." *Id.* Thus, Appellant has "impermissibly shifted the burden of analysis to the reviewing court in this case." *Smith v. Smith*, 1999 UT App 370, ¶ 9, 995 P.2d 14 (declining to review inadequately briefed issue where "the overall analysis of the issue is so lacking as to shift the burden of research and argument to the reviewing court," *id.* at ¶ 8 (quotations and citation omitted)).

Appellant's second "argument" fares no better. Indeed, it reads as though it is a declaratory judgment action filed in this Court: "Will Utah's law preempted [sic] by federal law?" *Id.* Other than unexplained citations to two federal statutes, however, the argument that follows is nearly incomprehensible.

"'To permit meaningful appellate review, briefs must comply with the briefing requirements sufficiently to enable [the Court] to understand . . . what particular errors were allegedly made, where in the record those errors can be found, and why, under applicable authorities, those errors are material ones necessitating reversal or other relief.'" *State v. Lucero*, 2002 UT App 135, ¶ 13, 47 P.3d 107 (*quoting Burns v. Summerhays*, 927 P.2d 197, 199 (Utah Ct. App. 1996)).

Appellant's brief fails to conform to these guidelines, making it extremely difficult for Appellees to respond thereto. When a party does not offer any meaningful analysis regarding a claim, this Court may decline to reach the merits. *See Thomas*, 961 P.2d at 305.

Because Appellant's brief is inadequate under Utah Rule of Appellate Procedure 24(a)(9), this court should decline to reach the merits of Appellant's claims, whatever they may be.

II. Even If Appellant's Claims Are Sufficiently Briefed, They Are Moot.

To the extent Appellant sets forth cognizable arguments, they are moot.

Utah appellate courts "refrain from adjudicating issues when the underlying case is

moot." *Burkett v. Schwendiman*, 773 P.2d 42, 44 Utah,1989. "A case is deemed moot when the requested judicial relief cannot affect the rights of the litigants." *Id.* (*citing Jones v. Schwendiman*, 721 P.2d 893, 894 (Utah 1986); *Black v. Alpha Fin. Corp.*, 656 P.2d 409, 410-11 (Utah 1982)); *see also Osguthorpe v. Osguthorpe*, 872 P.2d 1057, 1058 (Utah Ct. App.), *cert. denied*, 883 P.2d 1359 (1994) (dismissing appeal of contempt order due to mootness).

"Generally, when substantive issues are resolved prior to appeal, the appeal is rendered moot." *Saunders v. Sharp*, 818 P.2d 574, 577 (Utah App. 1991) (*citing Salt Lake City v. Tax Common*, 813 P.2d 1174, 1177 (Utah 1991). For instance, in *Saunders*, the appeal was based on the vacation of a stay and an allegedly unjustifiable interest award. *Id.* at 1176-77. However, at the time of appeal, a stay had been entered and the district court had modified its prior interest calculation. Thus, this Court determined that the "requested relief cannot affect the rights of the litigants" and determined that the case was moot. *Id.* at 1177 (internal quotations and citations omitted).

Here, Appellant's concerns were determined moot as early as the district court hearing. Appellant filed a motion to vacate a garnishment of his retirement assets on December 14, 2006, requesting vacation of the writ. *See* R. 1401 (Minute Entry, p.2). Having learned that the assets were, in fact, retirement accounts, Appellees filed a release of the garnishment on December 19, 2006. *See* R. 1401-02 (Minute Entry, pp. 2-3). The hearing on Appellant's motion was held on January 24, 2007, at which time the district court determined that Appellant's concerns were "moot and unnecessary." R. 1402

(Minute Entry, p.3).

This matter remains moot. Appellant's Brief fails to address this problem, let alone explain it. Instead, Appellant simply sets forth the arguments that Utah's garnishment law does not allow garnishment of retirement assets, and that Utah law is preempted by Federal law. *See* Appellant's Brief, p. 10. This Court has no need to delve into these questions, for they are not at issue. The district court has already ruled that Appellant's concerns are moot; they remain so on appeal.[1]

Because "the requested judicial relief cannot affect the rights of the litigants," *Burkett*, 773 P.2d at 44, this Court should dismiss this appeal as moot.

CONCLUSION

Appellant's brief is inadequate under Utah Rule of Appellate Procedure 24(a)(9). As a result, this court should decline to reach the merits of Appellant's claims. In the alternative, the Court should determine that any issue raised by Appellant are moot. In either event, dismissal of this appeal is appropriate.

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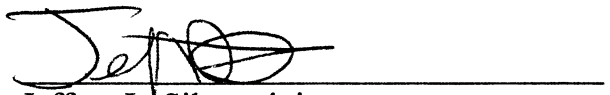
[1]While it is true that, on occasion, Utah appellate courts "invoke an exception to the mootness doctrine, as when the case presents an issue that affects the public interest, is likely to recur, and because of the brief time that any one litigant is affected, is capable of evading review," *Burkett v. Schwendiman*, 773 P.2d 42, 44 (Utah 1989) (citations omitted), no such exception is argued by Appellant in this case. Indeed, the issue of mootness is not even mentioned by Appellant in his brief.

DATED this 6th day of December, 2007.

COHNE, RAPPAPORT & SEGAL, P.C.



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Attorneys for Appellees

CERTIFICATE OF SERVICE

I hereby certify that, on this 6th day of December, 2007, I caused to be served a true and correct copy of the foregoing Appellees' Brief via First Class Mail, postage fully pre-paid, to the following:

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